

The 6th December, 1994

No.14/13/87-6 Lab./951.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/S Secretary, H.S.E.B. Panchkula *versus* Jog Bahadur.

IN THE COURT OF SH. U.B. KHANDUJA, PRESIDING OFFICER,
LABOUR COURT-II, FARIDABAD

Reference No. 616/93

between

THE MANAGEMENT OF M/s SECRETARY, H.S.E.B., HARYANA,
PANCHKULA

2. S.D.O. OPERATION, H.S.E.B., PANCHKULA

and

THE WORKMAN NAMELY SH. JOG BAHADUR S/O SH. KALU RAM
C/q SH. BHIM SINGH YADAV, 65-A, CHAWALA COLONY,
100 FEET ROAD, BALLABGARH

Present :

Shri B.S. Yadav, AR, for the workman.

Shri O.P. Goswami, for the respondent.

AWARD

In exercise of the powers conferred by clause(c) of sub-section(i) of section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,--*vide* Haryana Govt. Endst. No. 31965-70 dated 25th October, 1993 :--

Whether the termination of services of Sh. Jog Bahadur is legal and justified? If not, to what relief, is he entitled to?

2. The case of the workman is that he was appointed as daily wages Helper by the respondents on 1st October, 1979 and his last drawn wages were Rs. 540 p.m. He had not given any opportunity of complaint regarding his work and conduct. His services were terminated on 1st April, 1982 without assigning any reason and payment of retrenchment compensation envisaged under section 25-F of the Act. He had rendered service for a continuous period of more than 240 days and as such the termination of his services is in violation of provision of section 25-F of the Act is illegal unjustified. He is entitled to be reinstated into service with continuity in service and full back wages.

3. The respondent No. 2 submitted written statement dated 27th January, 1994 stating therein that the workman had worked as daily wages worker with them during the period from October, 1979 to March 1981 for a period of 197 days. He is thus, not entitled to any relief.

4. The workman submitted rejoinder dated 16th March, 1994 stating therein that he had remained in the employment of the respondents upto March 1982 and had rendered continuous service for 279 days and a certificate to this fact was also issued to him. The plea taken by the respondents in the written statement is thus, incorrect.

5. On the pleadings of the parties, the following issues were framed :--

1. Whether the reference is bad as alleged ? OPM
2. Whether the workman is not governed by the provisions of the Industrial Disputes Act as alleged ? OPM
3. Whether the workman has no existing right to claim the relief ? OPM
4. As per terms of reference ? OPM
6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :--

Issue No. 1 :

8. The authorised representative for the respondents did not press for this issue during the arguments and as such this issue is decided against the respondents and in favour of the workman.

Issues No. 2 to 4:

9. All the issues are interlinked and inter dependant and as such are discussed together.

10. The respondents have examined only one witness MW-1 T.C. Kansal and he deposed that the workman was engaged as daily wages worker in October 1979 and had worked for about 215 days till May 1981. The workman had then left the service himself. He also produced the statement Ex. M-1 containing abstract pertaining to the period of service rendered by the workman and copies of muster rolls Ex. M-2 to Ex. M-15 for the relevant period. In the end, he deposed that it was clear from the line drawn against the name of the workman in the muster rolls Ex. M-15 that the workman had himself not come to attend to his duty.

11. On the other hand, the workman deposed that he was appointed as daily wages Helper in October 1979 and had worked continuously till 1982. He further stated that he was also issued certificate Ex. W-2 with regard to the period of his service after the termination of his services.

12. On the basis of aforesaid evidence, it has been submitted on behalf of the respondents that it stands proved that the workman was appointed on daily wages basis and had stopped coming to attend to his duty of his own accord and that his services has not been terminated by the respondents. It was further submitted that the abstract Ex. M-1 as well as copies of the muster rolls Ex. M-2 to Ex. M-15 clearly show that the workman had not rendered service for a continuous period of more than 240 days during 12 calander months. Consequently, the workman has not existing right to claim the relief and the reference is bad. Thus, the reference be answered against the workman.

13. On the other hand, it has been submitted on behalf of the workman that it is clear from the certificate Ex. W-2 issued by the respondent No. 2 that the workman had rendered service for period of 275 days during the period from October 1979 to March 1982. The contention of the respondents in the written statement stands falsified that the workman had worked only for a period of 197 days upto March 1981. Thus, the objection taken on behalf of the respondents is not tenable and the claimant is entitled to reinstatement into service with continuity in service and full back wages.

14. It is admitted the case of both the parties that the workman was appointed on daily wages basis and so he was not issued any appointment letter. The workman has not stated on oath that the respondents had ever terminated his services or had asked him not to attend to his duty. The line drawn against the name of the workman in the muster rolls Ex.M-15 clearly shows that the workman himself had stopped attending the job and that his services had not been terminated by the respondent.

15. It is not disputed that the workman could raise the demand under the provisions of the Act if he had rendered service for a continuous period of 240 days in 12 calander months prior to the date of termination of his services. The workman had been in the employment of the respondents during the period from October 1979 to March, 1982 that is for 18 months as per certificate Ex. W-2. It is mentioned in this certificate Ex. W-2 that the workman had worked for a total period of 275 days with breaks in service during this period of 18 months. The documents abstract Ex. M-1 and copies of muster rolls Ex. M-2 to Ex. M-5 produced by the respondents in the court show that the workman had rendered service for a period of 179 days during the period from October 1979 to March 1981. He had rendered service for a period of 60 days during the period from April 1981 to May 1981. This position shows that the workman had rendered service for a period of 62 days from June 1981 to March 1982. It is thus, clear that the workman had not rendered service for a period of 240 days continuously during the 12 calander months from April 1981 to March 1982. Consequently, it is held that the workman could not avail the provisions of the Act and he had not right to claim the relief. Consequently, Issues No. 2 to 4 are decided in favour of the respondents and against the workman.

Relief:

16. In view of my finding on various issues referred to above, it is held that the services of the workman were not terminated by the respondents and that he had himself left the job after rendering the service for less than 240 days or 12 months. Consequently, he is not entitled to any relief. The award is passed accordingly.

U.B. KHANDUJA,

Dated the 17th November, 1994.

Presiding Officer,
Labour Court-II, Faridabad.

Endst. No. 3232 Dated the 17th November, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner & Secretary to Govt. Haryana, Labour Deptt., Chandigarh.

U.B. KHANDJUJA,

Presiding Officer,
Labour Court-II, Faridabad.